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CHAPTER I

PUPILS AND PARENTS*

School attendance has not only been made free, but compulsory for children resident within a given school district. Many states have also extended to children the privilege of attending, free of tuition, schools outside of the district of their residence, when the home district does not furnish the educational facilities they are qualified to enjoy. This is particularly true of attendance at high school. And where the pupil lives at an unreasonable distance from a school in his own district or from the one he is entitled to attend, free transportation has been frequently added to free tuition.

Many of the problems reaching the chief state school officer on appeal relate to tuition and transportation. In Iowa a few years ago tuition and transportation problems outnumbered all other problems appealed to the State Superintendent. It is not surprising, therefore, to find that numerous tuition and transportation problems find their way into the courts of law. This is evidenced by the number of such cases reported in the three previous *Yearbooks of School Law*.

Extension of High School Privileges

The growing tendency to make high schools as available and free as the elementary schools was expressed by the Kentucky Court of Appeals in holding that all twelve grades need not be taught in every school in the county, but that twelve-grade service must be available to every pupil.¹

By statute in Kentucky the county boards of education in the various counties have authority to unite with the governing authorities of any city in their respective counties for the purpose of establishing a high school, and the county boards are given power to make such contracts as are necessary for the establishment or maintenance of such school. The Court of Appeals held that the undenied allegations of the petition were sufficient to

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¹ *Wilson, County Superintendent of Schools v. Alsip*, 256 Ky. 466, 76 S. W. (2d) 288 (1934).

show compliance with the statutes by a county board of education and a city board in the execution and delivery of a contract to establish and maintain a joint high and graded school for the colored school children in the county and city.²

Tuition of Non-Resident Children

The status of a pupil whose parent, because of office or position, maintains a home in a district other than his legal residence was passed upon by the Supreme Court of Nebraska in 1935. It held that the legislature could require school districts to furnish educational facilities to children whose parent is stationed in Nebraska in the service of the United States Army, Navy, or Marine Corps, and that the cost could be met by state funds, but not from the common school fund established by the Constitution of Nebraska, for to do so would violate the command of the Constitution requiring that such funds should be equitably distributed among the several school districts of the state.³

Recognizing that proximity to a school is a matter of prime importance in construing a statute authorizing a child to attend school in another district, when no instruction is furnished in his own district or none in the grade he is entitled to pursue, the Supreme Court of Oklahoma held that the right to transfer to another district was not limited to those cases where the home district did not teach the desired grade or course of study.⁴ The convenience of the child in attending school was also recognized in the case of *Dermitt v. Sergeant Bluffs Consolidated School*, noted below.

Bonuses for Non-Resident Tuition Pupils

In recent years the competition for tuition fees paid by districts not maintaining a high school has become intense, and substantial inducements have sometimes been offered to pupils whose home districts are liable for their tuition to attend a particular high school rather than the one nearest to their own residence. The Kansas Supreme Court refused to sanction the

² *Board of Education of Barboursville v. Knox County Board of Education*, 260 Ky. 115, 84 S. W. (2d) 62 (1935).

³ *Taylor v. School District*, (Nebr.), 259 N. W. 168 (1935).

⁴ *St. Louis-San Francisco Railway Company v. Choctaw County Excise Board*, (Okla.), 48 P. (2d) 312 (1935).

practice of paying non-resident pupils a bonus, or the expenses of their transportation to and from school.⁵ Iowa put a stop to such practices by statute in 1935.⁶

Tuition Rates Fixed by County Superintendent

The tuition rate of non-resident pupils in some states is fixed by law; and in some it is a matter of agreement between the boards concerned. A California statute provided that in case the local boards fail to reach an agreement concerning tuition costs, the county superintendent was authorized to prescribe the terms and amount of tuition applying to pupils residing in other districts who attended the Ventura County High School. The rates and terms as fixed by the county superintendent were sustained by the Supreme Court of California but were held not to operate retroactively.⁷ In this same case the California Supreme Court gave scant consideration to the alleged unlawful delegation of legislative power and upheld the county superintendent's rulings concerning the rates for non-resident tuition from certain districts, no abuse of discretion having been shown. Kentucky also declared that certain acts were administrative functions and not an exercise of legislative power.⁸

Non-Collectible Tuition Claims

Another difficulty in the administration of a law with reference to the tuition of non-resident pupils was settled in Illinois. In this case it was held that where one school district sent annual statements to another district for tuition due, and the district billed audited the same, but sent a lesser sum which was accepted by the first district each year over a period of years, the first district is deemed to have waived any further claims of payment, and cannot later recover for the sums deducted from its original statements.⁹

5 *State ex rel. Boynton, Atty. Gen., v. Bunton*, 141 Kan. 103, 40 P. (2d) 326 (1935).

6 *Laws of Iowa*, 1935, Chapter 38.

7 *Fillmore Union High School v. Cobb*, (Cal. App.), 43 P. (2d) 863 mod. 44 P. (2d) 657 (1935).

8 *County Board of Education v. Goodpaster*, 260 Ky. 198, 84 S. W. (2d) 55 (1935).

9 *Board of Education v. Board of Education*, 273 Ill. App. 567 (1935).

Transportation

The cases involving the subject of school transportation present a variety of problems. Some involve purely problems of contract law with which this chapter is not concerned.¹⁰ A recent case held that authority to provide transportation does not authorize by implication the purchase of indemnity insurance to cover the operation of school buses as long as the board is not liable in damages for personal injuries.¹¹

Right of Parent to Collect for Transporting His Own Children

An interesting case arose in Iowa,¹² where territory embraced in a consolidated school district had been rendered inaccessible to the school by the shifting of the course of the Missouri River which left an area on the west side of the river which had formerly been on the east side. The Iowa school board made arrangements with a nearby Nebraska school board and paid for the tuition and transportation of the pupils from this area to the Nebraska school. After 1930, the Iowa school board continued to pay tuition but refused to pay for transportation. The plaintiff then transported his own children to the Nebraska school and ultimately sued in the district court of his residence in Iowa to recover for his effort and labor. He was awarded \$675 in the lower court and this was affirmed by the Iowa Supreme Court. The court held that if the Iowa school district recognized its duty to pay tuition to the Nebraska school, it could not refuse to pay transportation also, as it was clearly the policy of the state to transport all pupils living more than a mile from the school. The court rejected the plea that the Iowa school district had no power to incur liability for transportation of grade pupils outside of the state. The problems involved in this case have now been covered by statute.¹³

The right of a parent to recover for labor and service in transporting his children to school was more narrowly defined in a Kentucky case. The Court of Appeals of that state held that a parent could recover the reasonable cost of transporting his own

10 *Wilson v. Brouder*, (Mass.), 197 N. E. 26 (1935); *Leon Newchurch v. Ascension Parish School Board*, (La. App.), 161 So. 889 (1935); *Kent v. State ex rel. Clingan*, (Ind.), 194 N. E. 616 (1935).

11 *Board of Education v. Commercial Casualty Insurance Co.*, (W. Va.), 182 S. E. 87 (1935).

12 *Dermitt v. Sergeant Bluff Consolidated Independent School District*, (Ia.), 261 N. W. 636 (1935).

13 *Code of Iowa*, 1935, Secs. 4274-c1, to 4274-e7.

children to a school in another county only after he had begun action to recover such cost, but that he could not recover for that part of the cost of transportation which was incurred and paid without previous legal demand on the board.¹⁴

Powers of Boards in re Transportation

Another Kentucky decision held that the Kentucky School code made it mandatory upon a school board to provide transportation as to elementary grades and discretionary as to higher grades, if the school is not within reasonable walking distance of pupils attending it. Such cost must come from the general funds of the board and not from a levy of special tax.¹⁵

In Iowa when a school is closed because there are not enough pupils to constitute a legal school, the board of directors is obligated to pay the tuition and transportation of those entitled to school privileges to another school, but the duty to provide transportation does not fall upon the board unless the local school was closed for lack of pupils.¹⁶

The Supreme Court of Alabama held that a court of equity had no general supervisory power over the transportation of school children by the governmental agency set up for that purpose, and refused to enjoin the driver of a school bus from continuing to operate the same on the ground that he was an unfit and improper person to do so. The court pointed out that adequate remedies existed at law which should be invoked.¹⁷

School Attendance Officer

An Indiana statute creating the school office of county attendance officer and making the selection and payment of such officer mandatory was held not to violate the right of local self-government guaranteed by the state Constitution. The court held that the public schools were under the exclusive power of the General Assembly of the state.¹⁸

14 *Warren v. Knox County Board of Education*, 258 Ky. 212, 79 S. W. (2d) 681 (1935).

15 *Ex parte County Board of Education*, 260 Ky. 246, 84 S. W. (2d) 59 (1935).

16 *Riecks v. Independent School District*, (Ia.), 257 N. W. 546 (1934).

17 *Salter v. Board of Education of Jefferson County*, 229 Ala. 631, 159 So. 78 (1935).

18 *Stone v. State ex rel. Bossong*, (Ind.), 194 N. E. 642 (1935).